



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/727,593	12/04/2000	Florence P. Haseltine	12000-002001	3653
26171	7590	10/23/2003	EXAMINER	
FISH & RICHARDSON P.C. 1425 K STREET, N.W. 11TH FLOOR WASHINGTON, DC 20005-3500			RHODE JR, ROBERT E	
			ART UNIT	PAPER NUMBER
			3625	

DATE MAILED: 10/23/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/727,593

Applicant(s)

HASELTINE, FLORENCE P.

Examiner

Rob Rhode

Art Unit

3625

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 - 60 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-60 is/are rejected.
- 7) ☒ Claim(s) 18 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 December 2000 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ 6) ☐ Other: _____

DETAILED ACTION

Drawings

The drawings filed on 12/04/2000 are acceptable subject to correction of the informalities indicated on the attached "Notice of Draftperson's Patent Drawing Review," PTO-948. In order to avoid abandonment of this application, correction is required in reply to the Office action. The correction will not be held in abeyance.

Claim Objections

Claim 18 is objected to because of the following informalities: In the claim, the applicant refers to customer. However in the claim 1, which 18 is dependent from, the applicant refers to only the "party" and not a customer. For examination purposes, the customer and party will be considered the same entity.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 9 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In Claim 9, the word "substantially " is a relative word, which renders the claims indefinite. The word " substantially " is not defined by the claim(s),

Art Unit: 3625

one of ordinary skill in the art would not be reasonably appraised of the scope of the invention. For examination purposes the word "substantially" will be treated as a generic word.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 – 8, 10, 12 – 13, 19, 21 – 28, 30, 33, 39, 41 – 48, 50 and 53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Enomoto (US 5,974,401) in view of Rom (US 6,307,568 B1).

Regarding claim 1 and related claims 21 and 41, Enomoto teaches a method for providing a party accessing a merchant system electronic access to consumer-customized nonverbal information, the method comprising - collecting an electronic version of consumer-customized nonverbal information at a merchant site (Col 1, lines 53 – 53, Col 3, lines 22 – 30 and Figure 1). In addition and regarding claim 2 and related claims 22 and 42, Enomoto teaches a method, wherein the collecting includes obtaining at least one digital image representing the consumer-customized nonverbal information (Col 3, lines 31 – 39 and (3 plus related claims 23 and 43) wherein the digital image includes one or more still photos (Col 3, lines 31 – 49) as well as (4 plus

Art Unit: 3625

related claims 24 and 44) wherein the digital image includes a video clip (Col 3, lines 30 – 39).

However, Enomoto does not specifically disclose and teach displaying the electronic version of the consumer-customized nonverbal information for a party accessing the merchant system.

On the other hand, Rom teaches a method of displaying the electronic version of the consumer-customized nonverbal information for a party accessing the merchant system (Col 1, lines 48 – 52). Moreover:

regarding claim 5 and related claims 25 and 45, Rom teaches a method, wherein the consumer-customized nonverbal information includes at least one digital image of merchandise configured to conform to consumer specifications (see at least Abstract and Figures 1 – 3) and (6 plus related claims 26 and 46) wherein the image reflects a relationship between the merchandise and the consumer (see at least Abstract) as well as (7 and related claims 27 and 47) wherein the merchandise includes at least one clothing garment and the image reflects the consumer wearing the clothing garment (Abstract and Col 1, lines 48 – 49).

regarding claim 8 and related claims 28 and 48, the recitation that “wherein the merchandise includes at least one tool, and the image reflects the consumer operating

Art Unit: 3625

the tool" ", such recitation is given little patentable weight because it imparts no structural or functional specificity which serves to patentably distinguish the instant invention from the other "digital image" already disclosed by Rom.

regarding claim 10 and related claims 30 and 50, Rom teaches a method, wherein the displaying includes storing the image for later access by a computer used by the party to access the merchant system (Col 3, lines 31 – 35).

regarding claim 13 and related claims 33 and 53, Rom teaches a method, wherein the displaying is performed by using the Internet as a communication medium to transmit the electronic version of the customer-specified nonverbal information to the party (see at least Abstract).

regarding claim 19 and related claims 39 and 59, Rom teaches a method, wherein the party accesses the merchant system from a location remote to the merchant site (see at least Abstract and Figure 1).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have provided the method, computer medium and apparatus of Enomoto with the method, computer medium and apparatus of Rom to enable for providing a party accessing a merchant system electronic access to consumer-customized nonverbal information, the method comprising - collecting an electronic version of consumer-

customized nonverbal information at a merchant site and displaying the electronic version of the consumer-customized nonverbal information for a party accessing the merchant system – in order for a consumer to have had the ability to upload digital content that contains a photo of the consumer for use in trying on products at a merchant web site and then to have the ability to view various articles of clothing on the virtual consumer. In that regard, this capability to upload and virtually try on various garments would be a real advantage for the consumer by saving them time and cost. Indeed, this capability would significantly increase their satisfaction with the site and will increase the probability that they will return for additional purchases in the future as well as recommend the site to others.

Claims 11, 18, 31, 38, 51 and 58 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Enomoto and Rom as applied to claims 1, 21 and 41 above, and further in view of Sheridan (US 5,760,917).

The combination of Enomoto and Rom substantially discloses and teaches the applicant's invention.

However, the combination of Enomoto and Rom does not specifically disclose and teach a method wherein the displaying includes authenticating the party and denying access by the computer used by the party when the party is not authenticated properly and wherein the authenticating includes receiving authenticating information from the

party and comparing the authenticating information with information provided by the consumer as well as wherein the customer and party are different entities.

On the other hand and regarding claim 11 and related claims 31 and 51, Sheridan teaches a method, wherein the displaying includes authenticating the party and denying access by the computer used by the party when the party is not authenticated properly (see at least Abstract) and (12 plus claims 32 and 52) wherein the authenticating includes receiving authenticating information from the party and comparing the authenticating information with information provided by the consumer (see at least Abstract and Figure 2).

Regarding claim 18 and related claims 38 and 58, Sheridan teaches a method wherein the customer and party are different entities (see at least Abstract).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have provided the combination of Enomoto and Rom with the method of Sheridan to enable the displaying, which includes authenticating the party and denying access by the computer used by the party when the party is not authenticated properly and wherein the authenticating includes receiving authenticating information from the party and comparing the authenticating information with information provided by the consumer as well as wherein the customer and party are different entities – in order to ensure privacy. In that regard, the consumer sense of security will be increased and

thereby increase their satisfaction, which increase the probability that they will return in the future for additional purchases and recommend the site to others.

Claims 9, 14 – 17, 20, 29, 34 – 37, 41, 49, 54 – 57 and 60 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Enomoto and Rom as applied to claims 1, 5, 21, 25, 41, 45 and 51 above, and further in view of Tavor (US 6,070,149).

The combination of Enomoto and Rom substantially disclose and teach the applicant's invention.

However, the combination of Enomoto and Rom does not specifically disclose and teach a method further comprising receiving feedback from the party to which the electronic version of the consumer-customized nonverbal information is displayed wherein the feedback includes authorization for purchase of the merchandise as well as wherein the feedback includes a recommendation for purchase and wherein the consumer and party are a single entity. Nor does the combination of Enomoto and Rom specifically disclose and teach the displaying includes streaming the image to a computer used by the party to access the merchant system in substantially real time.

On the other hand and regarding Claim 9 and related claims 29 and 49, Tavor teaches a method, wherein the displaying includes streaming the image to a computer used by the party to access the merchant system in substantially real time (Col 2, lines 58).

Regarding claim 14 and related claims 34 and 54, Tavor teaches a method, further comprising receiving feedback from the party to which the electronic version of the consumer-customized nonverbal information is displayed (Col 3, lines 19 – 26 and Col 10, lines 54 – 59).

Regarding claim 15 and related claims 35 and 55, Tavor teaches a method, wherein the feedback includes authorization for purchase of the merchandise (Col 11, lines 30 – 32).

Regarding claim 16 and related claims 36 and 56, Tavor teaches a method, wherein the feedback includes a recommendation for purchase (Col 10, lines 54 – 59 and Col 36, lines 8 – 14).

Regarding claim 17 and related claims 20, 37, 41, 57 and 60, Tavor teaches a method, wherein the consumer and party are a single entity (Col 38, lines 27 – 29).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have provided the combination of Enomoto and Rom with the method of Tavor to enable receiving feedback from the party to which the electronic version of the

Art Unit: 3625

consumer-customized nonverbal information is displayed wherein the feedback includes authorization for purchase of the merchandise as well as wherein the feedback includes a recommendation for purchase and wherein the consumer and party are a single entity – in order to allow online interaction between the sales person and the consumer including recommendations as well as the capability of video streaming. In this regard, the enhanced ability to interact with the consumer on line will increase their satisfaction by providing the same attributes as the off line consultative sales environment and thereby increase their satisfaction. As a result, the consumer's satisfaction will be significantly increased, which will increase the probability that they will return often for other purchases as well as recommending the site to others too.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art is Rose (US 5,930,769), which also addresses online shopping with a virtual try on and recommendation capability.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rob Rhode whose telephone number is 703.305.8230. The examiner can normally be reached on M-F 7:30am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wynn Coggins can be reached on 703.308.1344. The fax phone numbers

Application/Control Number: 09/727,593
Art Unit: 3625

Page 11

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.306.1113.


WILLIAM W. COGGINS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600

RER

May 2, 2003